

## November 2010 Oklahoma Becomes the Next State to Approve Official English Legislation

ANNA KAGANIEC-KAMIEŃSKA\*

### REFERENDUM

The result of the referendum was easy to foresee. As a matter of fact, it would be quite a surprise if Oklahoma voters decided *not* to adopt English as the official “common and unifying language of the state.” The November referendum was the second attempt to approve such legislation. In 2008 a similar measure, SB163, was passed by a large margin in the House of Representatives, but died in Senate. One year later, both the House of Representatives and the Senate approved the measure HJR1042, thus allowing it to be placed on ballot in November 2010.<sup>1</sup> The measure was also endorsed by U.S. English, “the nation’s oldest, largest citizens’ action group dedicated to preserving the unifying role of the English language in the United States” (U.S. English, n.d.), which is working to establish English as the official language. It was also supported by similar organizations, namely, ProEnglish and English First (Oklahoma House of Representatives, 2009). Polls taken in 2010 showed widespread voters’ support (over 80 percent) for the measure.

Not surprisingly, on November 2, 2010, Oklahoma became the next –the 31<sup>st</sup>, according to the organization U.S. English– state to approve an Official English regulation SQ751. The amendment to the state Constitution will read, “As English is the common and unifying language of the State of Oklahoma, all official actions of the state shall be conducted in the English language, except as required by federal law. No person shall

\* Assistant Professor, Institute for American Studies and Polish Diaspora, Faculty of International and Political Studies, Jagiellonian University, Krakow, Poland. a.kaganiec-kamienska@uj.edu.pl.

<sup>1</sup> For more details see the Oklahoma House of Representatives and the Oklahoma Senate websites, <http://www.okhouse.gov> and <http://www.oksenate.gov>, accessed December 7, 2010.

have a cause of action against an agency or political subdivision of this state for failure to provide any official government actions in any language other than English. Nothing in this Article shall be construed to diminish or impair the use, study, development, or encouragement of any Native American language in any context or for any purpose. The Legislature shall have the power to implement, enforce and determine the proper application of this Article by appropriate legislation" (Oklahoma Secretary of State, 2010). A few days after the measure passed, a lawsuit was filed against it by Tulsa attorney James C. Thomas, in whose opinion it violates the free speech clause (McNutt, 2010).

## WHY OFFICIAL ENGLISH IN OKLAHOMA?

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The battle over official English in the United States started in the 1980s. Since then, the English-Only Movement has grown substantially. Even though no federal regulations have yet been passed, Official English measures have been adopted by the majority of U.S. states, either as a constitutional amendment or as a statute, most in the 1980s (when the IRCA amnesty for illegal immigrants took place) and in the mid-1990s (when Republicans took over the House of Representatives) (Dokoupil, 2010).

The general support of U.S. society for official English is often perceived as related to the current high immigration rates and the changes newcomers are believed to be bringing to American communities and towns (e.g. ethnic composition, rise of crime rates, etc.) (Crawford, 2001: 24-27). As a matter of fact, it was the composition of California's population and its high number of limited-English-proficient (LEP) students, mostly Hispanics or Latinos, that led California voters to pass just in the 1980s and 1990s such measures as: an Official English law, Proposition 63, in 1986, which later, however, was interpreted as a mostly symbolic measure; anti-immigrant Propositions 184 –"Three-strikes and you're out"– and 187 –"Save Our State"– in 1994; an anti-affirmative action measure, Proposition 209, "California Civil Rights Initiative," in 1996; and an anti-bilingual education act, Proposition 227, "English for the Children," in 1998.

Do immigrants constitute a significant part of Oklahoma's population and can they be regarded as a threat to the state's American culture? The 2000 U.S. census figures do not really suggest that immigration is a

big problem in Oklahoma; neither is the Latino minority.<sup>2</sup> The foreign-born constitute only 3.8 percent, and as little as 2.5 percent of the population is non-U.S. citizens. Hispanics/Latinos account for merely 5.2 percent of the population (U.S. Census Bureau, 2002b). Thus, statistically speaking, Oklahoma places itself far below average numbers for the United States (U.S. Census Bureau, 2002c).<sup>3</sup> And compared to California, where 1 in 3 people are of Hispanic/Latino origin, over 1 in 4 is foreign-born, 16 percent are not U.S. citizens, and only 60 percent of the population speaks “English only” at home (U.S. Census Bureau, 2002a; Guzmán, 2001: 4),<sup>4</sup> Oklahoma’s “Americanness” does not seem to be threatened and the Latino culture does not seem to have a major impact.

Why, then, should Oklahoma voters pass the measure? The arguments provided by its supporters are the same as those that always appear in cases like this. First, the regulation would provide substantial savings to the state, since it would not have to print documents, forms, and other materials in other languages. The possible savings, however, seem minimal. As Cherokee Nation Principal Chief Chad Smith wrote in his 2009 article for *Cherokee Phoenix*,

Where is the problem? English is the only language on the Web sites of all the state agencies and official publications. Someone said there are state materials printed in Spanish. How much did it cost the state? The best estimate I got was \$1500. Drew Edmondson, Oklahoma’s attorney general, has stated that [Randy] Terrill’s bill is an invitation to litigation. Inevitably, there will be challenges to ‘English Only’ and we, the taxpayers of Oklahoma, will foot the bill, which will be a thousand times more costly than some printed materials. I will personally give the state a check for the price paid last year for printing materials in a language other than English (Smith, 2009).

In fact, minority language rights in the United States do have some federal protection. Language rights today<sup>5</sup> mainly stem from Title VI of

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<sup>2</sup> This article uses data from the 2000 Census, since at the time of writing, the 2010 Census data are not yet available.

<sup>3</sup> Foreign born, 11.1 percent; non-citizen, 6.6 percent; Hispanics/Latinos, 12.5 percent.

<sup>4</sup> California has the second largest percent Hispanic/Latino population in the U.S. (32.4 percent), after New Mexico (42.1 percent) and before Texas (32 percent).

<sup>5</sup> Language rights are “defined almost entirely as components of *other* civil rights or civil liberties” and “vested in individuals and not in groups” (Crawford, 2007: 3)

the Civil Rights Act of 1964,<sup>6</sup> which has been interpreted by the courts to include individuals who are LEP.<sup>7</sup> Thus, agencies that receive federal funding and fail to ensure that LEP persons have meaningful access to the programs and services they offer may violate Title VI. An important measure designed to expand limited-English speakers' access to public programs and services of all kinds is Executive Order 13166, signed by President Bill Clinton in 2000, which puts such requirements on federal agencies, contractors, and grantees. This directive applies not only to the federal government but also to all recipients of federal funding (Department of Justice, 2000). It is, clearly enough, widely criticized by the supporters of Official English. There are also some other (few) federal regulations that require that persons who do not speak (sufficient) English be assisted. Among them are the 1975 amendment to the Voting Rights Act of 1965, which requires bilingual ballots in specific circumstances, and the 1978 Court Interpreters Act to help limited-English speakers in trial proceedings.<sup>8</sup>

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Yet, many people believe official English laws do *not* help them assimilate. In fact, immigrants can be deprived of the meaningful information they need to do so. In this respect, official English may be, in fact, counter-productive. As Representative Al Lindley once commented, "We should help people to assimilate and we don't help them assimilate if we just close our doors" (NewsOn6, 2008).

Third, an official English proposal is not an English-only proposal, which means that it is "limited to official government speech." However, an Official English measure does not need to openly refer to private conversations or, either, to enhance xenophobia and lead to absurd situations in which *any* utterance in a foreign language might be considered unlawful by fellow Americans. Some examples of *language vigilantism* are provided by James Crawford and Dennis Baron (Crawford, 2006: 5, Baron,

<sup>6</sup> "No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Sec. 2000d, Title VI of the 1964 Civil Rights Act. Department of Justice, 1964.

<sup>7</sup> For more information see, for example, Limited English Proficiency. A Federal Interagency Website, n.d.

<sup>8</sup> For more information see, for example, Feder, 2007.

1990: 20-21, Dennis Baron's Language Web, n.d.). Among the common ones, in this form or another, are a sign in a tavern, that reads, "In the U.S.A., It's English or Adios Amigo," or "This is America –when ordering SPEAK ENGLISH." Some others, though, are highly worrisome. To mention just a few: a mother accused by a judge during a child-custody hearing of child abuse for speaking Spanish to her daughter; a Cuban-American truck driver ticketed for his inability to answer questions in English; a Miami supermarket cashier suspended for speaking Spanish to fellow employees; children forbidden to speak Spanish on a school bus in Colorado, etc.

In sum, even though, as previously mentioned, statistically, immigrants are not likely to pose a major "threat," Oklahoma seems to be following other states' anti-immigrant –which in most cases means anti-Hispanic/Latino– sentiments and actions, clearly visible in the country. Take an example of the recent Republican proposal to bar U.S.-born children of illegal immigrants from becoming U.S. citizens (Foxnews, 2010). That Oklahoma is being carried on the wave of anti-immigrant sentiments can also be easily seen in the words of Randy Terrill, a co-author of HJR1042, who, at one point in a conversation with Chad Smith said that Indian languages would be excluded, and the bill was "only directed toward Hispanics" (Smith, 2009). Terrill also authored HB1804 (Oklahoma Taxpayer and Citizen Protection Act of 2007) (Oklahoma's Official Website, 2007), a harsh anti-illegal immigration regulation, later challenged in a few lawsuits (Carter, 2010), which had a considerable impact on the immigrant community and local business (Bazar, 2008; Koralek, Pedroza, and Capps, 2009). Today, Oklahoma is also considering another measure. After Arizona approved the controversial regulation SB1070 in April 2010 (Arizona State Senate, 2010), considered the strictest anti-illegal immigration measure in decades and whose most contested provisions were blocked in July that same year, Oklahoman Republicans started to consider an even more draconian measure than Arizona's (Sacks, 2010).

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## NO TO OFFICIAL ENGLISH

The idea of passing official English in Oklahoma was opposed by Native American organizations. Oklahoma's substantial Native American population consists of 38 Indian nations (Oklahoma Tribal Affairs Commission, n.d.), each of which has its own unique culture. With a Native American

population of over 273 000 in 2000,<sup>9</sup> the state had the second highest number after California and the third largest percent (8 percent) in the country after New Mexico and South Dakota (Ogunwole, 2002: 5). Even though the measure HJR1042 does not apply to this group, since it cannot be used to “diminish or impair uses of Native American languages,” their voice should be addressed and heard. That is because, as Chad Smith said, “We have Indians in this state who have lived under a regime of English-only; that was the rule in Indian boarding schools in Oklahoma for generations” (Talley, 2009).

The boarding school experience had a very negative impact on Native American communities and their cultures, including their languages (Schmid, 2001: 23-25). Boarding schools were a fruit of the restrictive assimilation policy toward Native Americans undertaken after the Civil War.<sup>10</sup> Since the Commissioner of Indian Affairs considered “proper” education of Native American children the fastest and the most effective way to assimilate – “civilize” – the group (Reyhner, 1992: 42-45), from the 1870s until the 1920s, Indian children were placed in boarding schools run by the Bureau of Indian Affairs (BIA), away from their parents, communities, and culture. As Carol L. Schmid states, by the 1920s the number of such schools reached 77 (2001: 23). Their principal aim was to replace Indian languages with English. Native American children were thus forced to learn English, and at the same time they were punished for speaking their languages, or participating in indigenous religious rituals.

In the 1920s, forced assimilation and boarding schools were severely criticized as being “at variance with modern views of education and social work, which regard the home and family as essential social institutions from which it is generally undesirable to uproot children” (Lewis Meriam, quoted in Reyhner, 1992: 45). In short, boarding schools led to a “cultural disintegration” of Native American children and are often seen as responsible for the problems Indian communities face today, alcoholism among them (Schmid, 2001: 23).

Even though today, the federal administration is working to compensate for the damage, the harmful boarding school experience continues to be present in the Native American community. It should not come as

<sup>9</sup> Data for “American Indian and Alaska Native alone Population”.

<sup>10</sup> For more on U.S. policies toward Native Americans, see, for example, Deloria, Jr. and Lytle, 1983: 1-24.

a surprise that Native Americans have been opposing the law since it was initially proposed in 2007. When in February 2007 the House General Government and Transportation Committee approved an official English measure, Chad Smith described it as a “really just an ugly symbol of intolerance,” while a Democrat Representative Jerry McPeak, a member of the Creek tribe, said, “I’m embarrassed to be a part of a Legislature that takes part in legislation like this. I am sure that this piece of legislation is nothing more than political fluff, designed to scare people” (Foxnews, 2007).

As a matter of fact, Chad Smith is one of the strongest opponents of English-Only in Oklahoma. In 2009, he wrote,

“English Only” is really about the political fear of someone being different or smarter because they can speak a language that others cannot. It is political bullying, firmly planted in intolerance, hatred, fear, and the federal “English only” policies that led to my dad having his mouth washed out with soap for speaking Cherokee in federal boarding school.

He also addressed the issue of excluding the Indian languages from the scope of the measure: “Our Native people have been the victims of this type of bullying for centuries. I can’t stand idly by and watch it happen all over again to others, and I urge Oklahomans to join me and the leaders of many other Oklahoma tribes, state business leaders, and educators in this fight” (Smith, 2009).

Other opponents of official English are various advocacy groups. The Coalition for the American Dream (ADC), a non-profit organization founded to show solidarity for the thousands of immigrants and their families in Oklahoma, emphasized the impact of the regulation on the state economy. Marvin G. Lizama, the president of ADC, pointed out, “It will have a direct effect on tourism, on travel, and on conventions. When you have a state-wide policy closing the state to outsiders, you are not going to be getting that revenue” (Brown, 2010). ADC also published a clear “English Only Statement” on the organization’s website (Coalition for the American Dream, n.d.).

The state economy is not, however, the only problem that the official English amendment may cause. Brenda L. Morales from the Oklahoma State University Hispanic Student Association called it “a form of oppression.” “Nearly every (state) is in English already so I don’t see the point. In a sense, like or it or not, language is part of our culture” (Brown, 2010).

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Many Oklahoma newspapers did not approve of the measure either. For example, the *Tulsa World* and *The Oklahoman* repeated the argument that the measure was pointless, because English *already was* the state's dominant language (*Tulsa World*, 2010; NewsOK, 2010). The *Oklahoma Daily*, on the other hand, emphasized the fact that it alienates and marginalizes all non-English language speakers (2010). *The Enid News and Eagle* also pointed out that the measure does not solve the illegal immigration problem, and not only does not break cultural barriers but also "cause[s] more divisiveness on this issue" (2010).

## CONCLUSION: WHAT DIFFERENCE DOES IT MAKE?

Some official English laws have little (legal) impact on the community (e.g., when English is declared the official language, but no further provisions are made). As one commentator observed, these official English laws "appear on their face to have little more [legal] significance than a state's choice of an official motto or the official state bird" (Bender, 1996). Still, in some other cases the impact may be more significant. For example, the controversial Arizona 1988 constitutional amendment, approved in a referendum in a close vote, stated that "This State and all political subdivisions of this State shall act in English and no other language," except in a few circumstances, e.g., "to protect public health or safety" or "to protect the rights of criminal defendants or victims of crime". The English language was also "the language of the ballot, the public schools, and all government functions and actions" (Language Policy Net, 1988). As restrictive as it was, the measure was later ruled a violation of the U.S. Constitution.<sup>11</sup> Another official English measure passed in Arizona in 2006 was less restrictive. The same was the case with Alaska, whose very restrictive 1998 measure was also ruled as violating the state Constitution in (2002). In 2007, though, the Alaska Supreme Court rejected the claims and upheld the official English law (U.S. English, 2007).

What kind of impact on the community will the Oklahoma official English law have? As already mentioned, the measure has been challenged in court. Even if the law becomes mainly symbolic, and even though there is no real threat to U.S. culture in this state, it is highly possible that it

<sup>11</sup> For more on Proposition 106, see, for example, Combs, 1999: 131-151.



*will* have an impact on the community. Because what is truly worrisome is that this and other anti-immigrant measures gain a lot of community support. They may finally lead to *language vigilantism* (as exemplified before) and the rise of xenophobic sentiments. They will by NO means contribute to the well-being and prosperity of the state. This concern may be expressed in Chad Smith's words: "In a state that already has faltering tourism, industries, and businesses, do we really want to present the image of Oklahoma as a backward place that endorses ignorance over intelligence, intolerance over openness, and force over education?" (Smith, 2009).

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